

**REMARKS**

The present amendment is submitted in response to the Office Action dated August 11, 2004, which set a three-month period for response, making this amendment due by November 11, 2004.

Claims 15-31 are pending in this application.

In the Office Action, claims 15-17, 20, 21, and 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,265,270 to Stengel et al in view of U.S. Patent No. 5,339,455 A to Vogt et al and U.S. Patent No. 5,450,622 to Vandegraaf. Claims 18, 19, 26, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Vandegraaf, and further in view of U.S. Patent No. 5,369,803 A to Hirasawa. Claim 22 was rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Vandegraaf, and further in view of U.S. Patent No. 5,831,256 to De Larminat et al. Claim 23 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Vandegraaf, and further in view of U.S. Patent No. 4,430,609 to Van Kessel et al. Claims 24, 25, and 28-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Vandegraaf and further in view of the Examiner's official notice.

The Applicants respectfully submit that claim 15, along with its dependent claims, is not obvious over the cited combination of the Stengel, Vogt, and Vandegraaf references. It is respectfully submitted that since the prior art does

not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in **MPEP section 2143.01**.

The Applicants believe reiteration of the patentable distinctions between the present invention and the patents to Stengel and Vogt, presented in the prior amendments, is appropriate.

The primary reference to Stengel et al fail to show the specific parameter to be changed in case of error free signal reception and also fail to show the specific way to do this. Stengel et al propose a solution according to which a better receiving mode is initiated immediately after detection of a good signal quality for a certain period of time. So, according to Stengel et al, the better receiving mode is held even if the signal quality gets worse during this period for time. After the predetermined period of time, the receiving mode is changed irrespective of the signal quality (see Stengel et al, column 6, lines 41-52).

The secondary reference to Vogt et al shows a radio receiver which checks the signal level of the received signal. Depending on the signal level, filter means are switched. Vogt et al show a radio apparatus in which at least one parameter of the receiver part is switched when a signal level exceeds a certain value. Therefore, Vogt et al also fail to disclose the solution of checking the signal quality for a certain predetermined time and lowering a parameter of the receiver part when the signal quality is good for this predetermined time.

The Examiner states that the newly cited reference to Vandegraaf shows the determination of error-free signal reception for a predetermined time to lower a parameter. According to Vandegraaf, a threshold value (for example, see

Figure 3, VST, VSTL) is lowered under predetermined circumstances. When the receiver is activated and a first initial delay has passed (T0 to T1), the carrier activity status (CAS) is monitored. The monitoring starts after an integration observation interval (T1 to T2). If the voltage U1 exceeds the threshold VST after that time interval, the threshold is lowered to VSTL. If the voltage U1 lowers the VST again, nothing happens.

Therefore, Vandegraaf does not show the change of a parameter in the case of an error-free signal reception and the re-change of the parameter in the case of defective reception. The hysteresis of Vandegraaf is not a hysteresis based on time, but based on two different threshold values.

Vandegraaf teaches avoiding a ping-pong switching by lowering the threshold value for detection of an error-free reception. Furthermore, Vandegraaf provides no suggestion of providing a change of a parameter when a defective reception is detected, whereas a re-change only takes place when an error-free reception is detected for a predetermined period of time.

The modification proposed by the Examiner would change the principle of operation of the prior art, so that also for this reason the references are not sufficient to render the claims *prima facie* obvious (see the last paragraph of the aforementioned **MPEP section 2143.01**). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. *ACS Hosp. Sys., Inc. v. Montefiore*


*Hosp.*, 221 USPQ 929, 932, 933 (Fed. Cir. 1984). Here, the prior art of record fails to provide any such suggestion.

For the reasons set forth above, the Applicants respectfully submit that claim 15, along with its dependent claims 16-31 is patentable over the cited reference combinations. The Applicants further request withdrawal of the rejections under 35 U.S.C. 103 and reconsideration of the application as herein amended.

In light of the foregoing arguments in support of patentability, the Applicants respectfully submit that this application stands in condition for allowance. Action to this end is courteously solicited.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,



Michael J. Striker  
Attorney for Applicant  
Reg. No.: 27233  
103 East Neck Road  
Huntington, New York 11743  
631-549-4700